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ATTORNEYS FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ALLIANCE FOR THE WILD ROCKIES, Plaintiff, vs. THE ENVIRONMENTAL PROTECTION AGENCY, Defendant.	CV 17-64-DLC UNOPPOSED MOTION TO STAY
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Defendant, the Environmental Protection Agency (EPA), respectfully moves the Court to stay this action until January 19, 2018. Plaintiff, Alliance for the Wild Rockies (Alliance), agrees that a stay is likely to conserve judicial resources, and, for that reason, does not oppose the stay. In support of this motion, EPA states the following:

1. In 1983, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, EPA listed the Silver Bow Creek Site on the National Priorities List and began response actions. EPA promulgated an amended listing for the site in 1987, and the site was re-named the Silver Bow Creek/Butte Area Site. Currently, there are six ongoing remedial actions occurring at the Silver Bow Creek/Butte Area Site at six interrelated operable units. One operable unit has not been the subject of a removal or remedial action to date, and another operable unit has been deferred to ongoing State of Montana action pursuant to the Montana Metal Mine Reclamation Act. The ongoing site remedial actions address the release and threatened release of contamination associated with mining operations, including wood treating for use of wood in mines in, near and downstream of Butte, Montana, extending to the Warm Springs Ponds – operations conducted primarily by the Anaconda Copper Mining Company and its predecessor companies.

2. In 2010, the U.S. Fish & Wildlife Service (Service) designated critical habitat for the bull trout – a species listed as “threatened” under the Endangered Species Act (ESA). 75 Fed. Reg. 63,898 (Oct. 18, 2010).

3. Alliance’s complaint, filed on May 16, 2017, alleges a procedural violation of the ESA. ECF No. 1. More specifically, Alliance argues that EPA has failed to consult with the Service under Section 7 of the ESA on the potential effects of its remedial actions at the Silver Bow Creek/Butte Area Site on bull trout and its designated critical habitat.

4. EPA maintains that it is in compliance with all applicable federal environmental laws and that this Court does not have jurisdiction to review this case. EPA does not waive any argument or defense by entering into this stay.

5. EPA has initiated Section 7 consultation with the Service and is in the process of analyzing the effects of its remedial actions on, among others, bull trout and its designated critical habitat.

6. EPA has not prepared a biological assessment for the remedial actions at the Silver Bow Creek/Butte Area Site. At this time, EPA anticipates completing its effects analysis in or around December 2017.

7. Alliance has represented that it intends to dismiss its case after EPA prepares a biological assessment for the Silver Bow Creek/Butte Area Site.

8. For these reasons, the parties agree that a stay of the litigation at this time is warranted to conserve the resources of the Court.

9. The Court has “broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997).

10. For these reasons, EPA respectfully requests that the Court stay this action in its entirety (including Defendant’s September 18, 2017 deadline to respond to Plaintiff’s complaint) until January 19, 2018 to allow EPA to focus on the ongoing Section 7 consultation.

11. If Alliance has not voluntarily dismissed this matter, EPA will respond to Alliance’s complaint on or before January 19, 2018.

DATED this 24th day of August, 2017.

JEFFREY R. WOOD,
Acting Assistant Attorney General
SETH M. BARSKY, Chief
MEREDITH L. FLAX, Assistant Chief

/s/ Rickey D. Turner, Jr.
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ALLIANCE FOR THE WILD ROCKIES, Plaintiff, vs. ENVIRONMENTAL PROTECTION AGENCY, Defendant.	CV 17-64-DLC CERTIFICATE OF SERVICE
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I hereby certify that on August 24, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Rickey D. Turner, Jr.
RICKEY D. TURNER, JR.